

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**DWAYNE JOHNSON, DANIEL R. MCBRIDE,
DAVID L. MILLER, et al.,
Plaintiffs,**

v.

Case No. 05-C-1058

**MATTHEW FRANK et al.,
Defendants.**

ORDER

On October 12, 2005, pro se plaintiff Daniel R. McBride was ordered to pay an initial partial filing fee of \$1.64 to the clerk of court within twenty-one days of the court's order, pursuant to the provisions of the Prison Litigation Reform Act (PLRA). See 28 U.S.C. § 1915(b)(1). By letter of October 24, 2005 plaintiff indicated that he had insufficient funds in his trust account to cover the initial partial filing fee and requested that I order the warden to withdrawal funds from his release account. However, plaintiff only had \$0.05 in his release account. As such, plaintiff remains deficient \$1.59 for his initial partial filing fee. Plaintiff has submitted another letter dated November 14, 2005, in which he again asserts that he is without funds to pay the filing fee.

Prisoner requests to proceed in forma pauperis are governed by 28 U.S.C. § 1915. Pursuant to that section, prisoners are assessed an initial partial filing fee based on a calculation using the average balance of the prisoner's trust account. Id. § 1915 (b)(1)(A-B). However, the section also provides that "[i]n no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the

prisoner has no assets and no means by which to pay the initial partial filing fee.” Id. § 1915(b)(4).

Given this provision, I conclude that plaintiff’s payment of \$0.05 is sufficient to cover his initial partial filing fee. However, he is still required to pay the full filing fee in increments, according to the formula set forth in § 1915(b).

NOW, THEREFORE, IT IS HEREBY ORDERED that plaintiff McBride’s payment of \$ 0.05 will be considered full payment of his initial partial filing fee.

Dated at Milwaukee, Wisconsin, this 1 day of December, 2005.

/s _____
LYNN ADELMAN
District Judge